

RESOLUTION NO. 15-81

AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF ITS MULTIFAMILY HOUSING REVENUE NOTE (RIVER NORTH PROJECT), SERIES 2015; ADOPTING A HOUSING PROGRAM PURSUANT TO MINNESOTA STATUTES, CHAPTER 462C; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE NOTE AND RELATED DOCUMENTS; PROVIDING FOR THE SECURITY, RIGHTS, AND REMEDIES WITH RESPECT TO THE NOTE; AND GRANTING APPROVAL FOR CERTAIN OTHER ACTIONS WITH RESPECT THERETO

WHEREAS, the City of Coon Rapids, Minnesota (the “City”), is a home rule charter city duly organized and existing under the Constitution and laws of the State of Minnesota; and

WHEREAS, pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Act”), the City is authorized to carry out the public purposes described in the Act by issuing revenue bonds or other obligations to finance or refinance multifamily housing developments located within the City, and as a condition to the issuance of such revenue bonds, adopt a housing program providing the information required by Section 462C.03, subdivision 1a, of the Act; and

WHEREAS, in the issuance of the City’s revenue note and in the making of a loan to finance a multifamily housing development the City may exercise, within its corporate limits, any of the powers that the Minnesota Housing Finance Agency may exercise under Minnesota Statutes, Chapter 462A, as amended, without limitation under the provisions of Minnesota Statutes, Chapter 475, as amended; and

WHEREAS, Coon Rapids Leased Housing Associates IV, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), has requested that the City issue its revenue note under the Act and lend the proceeds thereof to the Borrower to finance the following: (i) the acquisition, construction, and equipping of an approximately 167 unit senior housing facility and related amenities to be located at 10940 Crooked Lake Boulevard Northwest in the City (the “Project”); (ii) the funding of one or more reserve funds to secure the timely payment of the note; and (iii) the payment of the costs of issuing the note; and

WHEREAS, the Project is designed and intended to be used primarily for seniors for rental occupancy but is not restricted to persons age 55 and older; and

WHEREAS, the City has prepared a housing program (the “Housing Program” or “Program”) to authorize the issuance by the City of a revenue note in the maximum principal amount of \$26,000,000 to finance the acquisition, construction, and equipping of the Project; and

WHEREAS, a notice of public hearing (the “Public Notice”) was published in the *Anoka County Union Herald*, the official newspaper and a newspaper of general circulation in the City, with respect to: (i) the required public hearing under Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”); (ii) the required public hearing under Section 462C.04, subdivision 2, of the Act; (iii) the Housing Program; and (iv) approval of the issuance of the Note, as hereinafter defined; and

WHEREAS, the Public Notice was published at least 15 days before the regularly scheduled meeting of the City Council of the City (the “City Council”), and on this same date, the City Council

conducted a public hearing at which a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing; and

WHEREAS, the Borrower has requested that the City issue, sell, and deliver its Multifamily Housing Revenue Note (River North Project), Series 2015 (the “Note”), in an original aggregate principal amount not to exceed \$26,000,000, in one or more series; and

WHEREAS, the proceeds derived from the sale of the Note will be loaned by the City to the Borrower pursuant to the terms of a Project Loan Agreement, dated on or after June 1, 2015 (the “Project Loan Agreement”), by and among the City, a fiscal agent to be determined by the Borrower and the Funding Lender (defined below) (the “Fiscal Agent”) and the Borrower, whereby the City will apply the proceeds derived from the sale of the Note to fund a loan to the Borrower; and

WHEREAS, as further security for the repayment of principal and interest on the Note, the Borrower will execute a Multifamily Security Agreement, dated on or after June 1, 2015 (the “Mortgage”) for the benefit of U.S. Bank National Association (the “Funding Lender”); and

WHEREAS, the Note will be issued pursuant to this resolution and a Funding Loan Agreement, dated on or after June 1, 2015 (the “Funding Loan Agreement”) by and among the Funding Lender, the City and the Fiscal Agent, and the Note and the interest on the Note: (i) shall be payable solely from the revenues pledged therefor under the Project Loan Agreement, the Funding Loan Agreement and the Mortgage; (ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City’s interest in the Project Loan Agreement; and (v) shall not constitute a general or moral obligation of the City; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COON RAPIDS, MINNESOTA, AS FOLLOWS:

1. The City acknowledges, finds, determines, and declares that the issuance of the Note is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Note, and the other actions of the City under the Funding Loan Agreement, the Project Loan Agreement, and this resolution constitute a public purpose and are in the interests of the City. In authorizing the issuance of the Note for the financing of the Project and the related costs, the City’s purpose is and the effect thereof will be to promote the public welfare of the City and its residents by providing multifamily housing developments for low or moderate income senior residents of the City and otherwise furthering the purposes and policies of the Act.

2. The Housing Program is hereby adopted, ratified, and approved in all respects without amendment. The preparation of the Housing Program is hereby ratified, confirmed, and approved. The City Manager is hereby authorized to do all other things and take all other actions as may be necessary or appropriate to carry out the Housing Program in accordance with the Act and any other applicable laws and regulations. Pursuant to the Housing Program, all units in the Project shall be occupied by at least one person who is at least 55 years of age at the time of initial occupancy.

3. Under Section 146 of the Code, the Note must receive an allocation of the bonding authority of the State of Minnesota. An application for such an allocation must be made pursuant to the requirements of Minnesota Statutes, Chapter 474A, as amended (the “Allocation Act”). The City Council hereby authorizes the submission of an application for allocation of bonding authority pursuant to Section 146 of the Code and the Allocation Act in accordance with the requirements of the Allocation Act. The

Mayor of the City, the City Manager, and Kennedy & Graven, Chartered, acting as bond counsel with respect to the Project and the Note, are hereby authorized and directed to take all actions, in cooperation with the Borrower, as are necessary to submit an application for an allocation of bonding authority to Minnesota Management & Budget.

4. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Note in one or more series in the maximum aggregate principal amount not to exceed \$26,000,000. The Note shall bear interest at the rates, shall be designated, shall be numbered, shall be dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the Funding Loan Agreement, in substantially the form now on file with the City, with necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Note, the stated maturity of the Note, the interest rates on the Note and the terms of redemption of the Note) as are approved as evidence by the execution thereof as provided in Section 9. The City hereby authorizes the Note to be issued, in whole or in part, as “tax-exempt bonds,” the interest on which is excludable from gross income for federal and State of Minnesota income tax purposes or as taxable bonds. The Note shall be a special, limited obligation of the City payable solely from the revenues provided by the Borrower pursuant to the Project Loan Agreement and other funds pledged pursuant to the Funding Loan Agreement; however, the City does not pledge its general credit or taxing powers or any funds of the City to the payment of the Note.

All of the provisions of the Note, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof.

5. The City Council hereby provides that the Funding Loan Agreement shall provide the terms and conditions, covenants, rights, obligations, duties, and agreements of the owners of the Note, the City, and the Fiscal Agent as set forth therein. The Fiscal Agent is hereby appointed as Paying Agent and Bond Registrar for the Note.

All of the provisions of the Funding Loan Agreement, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof.

6. All of the provisions of the Project Loan Agreement, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof.

7. To ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Code and to ensure compliance with certain restrictions imposed by the City, the Mayor and City Manager are also hereby authorized and directed to execute and deliver a Regulatory Agreement, dated on or after June 1, 2015 (the “Regulatory Agreement”), among the City, the Borrower, and the Fiscal Agent.

8. The Note shall be a special, limited revenue obligation of the City, the proceeds of which shall be disbursed pursuant to the terms of the Funding Loan Agreement and the Project Loan Agreement, and the principal, premium, and interest on the Note shall be payable solely from the proceeds of the Note, the revenues derived from the Project Loan Agreement, and the other sources set forth in the Funding Loan Agreement.

9. The Mayor and the City Manager (the “City Officials”) are hereby authorized and directed to execute and deliver the Project Loan Agreement, the Funding Loan Agreement, the Note, the Regulatory Agreement, an Assignment of Multifamily Security Agreement, dated on or after June 1, 2015 (the “Assignment of Mortgage”), from the City to the Fiscal Agent, a Note Purchase Agreement, dated as of or after June 1, 2015, if requested by the purchaser of the Note (the “Note Purchase Agreement”), any consents or documents necessary in connection with the transfer of the Note to Freddie Mac, including without limitation, an amended and restated note, and such other documents as are necessary or appropriate in connection with the issuance, sale, and delivery of the Note, including various certificates of the City, the Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, a certificate as to arbitrage and rebate, and similar documents (collectively, the “Financing Documents”). All of the provisions of the Financing Documents, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Financing Documents shall be substantially in the forms on file with the City which are hereby approved, with such necessary and appropriate variations, omissions, and insertions as are approved by bond counsel to the City, as do not materially adversely change the substance thereof with respect to the City, and as the City Officials, in their discretion, shall determine, and the execution thereof by the City Officials shall be conclusive evidence of such determinations.

10. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel, to prepare, execute, and deliver its approving legal opinions with respect to the Note.

11. The United States Department of the Treasury has promulgated regulations governing the use of the proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City or the Borrower for project expenditures paid prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than sixty (60) days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds occur within eighteen (18) months after the later of: (i) the date the expenditure is paid; or (ii) the date the project is placed in service or abandoned, but in no event more than three (3) years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

To the extent any portion of the proceeds of the Note will be applied to expenditures with respect to the Project, the City reasonably expects to reimburse the Borrower for the expenditures made for costs of the Project from the proceeds of the Note after the date of payment of all or a portion of such expenditures. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Note, or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations and also qualifying expenditures under the Act.

Based on representations by the Borrower, other than (i) expenditures to be paid or reimbursed from sources other than the Note, (ii) expenditures permitted to be reimbursed under prior regulations pursuant to the transitional provision contained in Section 1.150-2(j)(2)(i)(B) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures with respect to the Project to be reimbursed with the proceeds of the Note have been made by the Borrower more than sixty (60) days before the date of adoption of this resolution of the City.

Based on representations by the Borrower, as of the date hereof, there are no funds of the Borrower reserved, allocated on a long term-basis or otherwise set aside (or reasonably expected to be

reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Project to be financed from proceeds of the Note, other than pursuant to the issuance of the Note. This resolution, therefore, is determined to be consistent with the budgetary and financial circumstances of the Borrower as they exist or are reasonably foreseeable on the date hereof.

12. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the City or the City Council by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the City or by such members of the City Council, or such officers, board, body or agency thereof as may be required or authorized by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member of the City Council, or any officer, agent or employee of the City in that person's individual capacity, and neither the City Council nor any officer or employee executing the Note shall be personally liable on the Note or be subject to any personal liability or accountability by reason of the issuance thereof.

No provision, covenant or agreement contained in the aforementioned documents, the Note, or in any other document relating to the Note, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to a general or moral obligation of the City or any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Project Loan Agreement which are to be applied to the payment of the Note, as provided therein.

13. Except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation, other than the City, any holder of the Note issued under the provisions of this resolution, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City, and any holder from time to time of the Note issued under the provisions of this resolution.

14. In case any one or more of the provisions of this resolution, other than the provisions contained in the first sentence of Section 4, or of the aforementioned documents, or of the Note issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Note, but this resolution, the aforementioned documents, and the Note shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

15. The Note, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Note and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Note, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

16. The officers of the City, bond counsel, other attorneys, engineers, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Note, for the full, punctual, and complete

performance of all the terms, covenants, and agreements contained in the Note, the aforementioned documents, and this resolution. If for any reason the Mayor or the City Manager is unable to execute and deliver the documents referred to in this Resolution, such documents may be executed by any member of the City Council or any officer of the City delegated the duties of the Mayor or the City Manager with the same force and effect as if such documents were executed and delivered by the Mayor or the City Manager.

17. The Borrower shall pay the administrative fee of the City on the date of issuance of the Note. The Borrower will also pay, or, upon demand, reimburse the City for payment of, any and all costs incurred by the City in connection with the Project and the issuance of the Note, whether or not the Note is issued, including any costs for attorneys' fees.

18. This Resolution shall be in full force and effect from and after its approval.

Adopted by the City Council of the City of Coon Rapids, Minnesota, on this 2nd day of June, 2015.

CITY OF COON RAPIDS, MINNESOTA

Mayor

Attest:

City Clerk